

~~RECEIVED~~
RECEIVED

FEB 18 2004

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

2002 Biennial Regulatory Review -- Review of the
Commission's Broadcast Ownership Rules and Other
Rules Adopted Pursuant to Section 202 of the
Telecommunications Act of 1996

MB Docket No. 02-277

Cross-Ownership of Broadcast Stations and Newspapers

MM Docket No. 01-235

Rules and Policies Concerning Multiple Ownership of
Radio Broadcast Stations in Local Markets

MM Docket No. 01-317

Definition of Radio Markets

MM Docket No. 00-244

Definition of Radio Markets for Areas Not Located In An
Arbitron Survey Area

MB Docket No. 03-130

TO THE COMMISSION

COMMENTS ON PETITIONS FOR RECONSIDERATION

The Diversity and Competition Supporters respectfully comment on four other petitions
for reconsideration in this proceeding.^{1/}

I Consumer Federation of America and Consumers Union

CFA and CU present a number of objections to the Commission's Diversity Index. CFA
and CU Petition for Reconsideration, pp. 14-24. We generally agree with CFA/CU's analysis.
In particular, CFA and CU object to the equal weighting of media with vastly different audience
sizes and intensities of audience use. Our Source Diversity Formula included coefficients that
accounted for these factors. See Diversity and Competition Supporters' Petition for
Reconsideration, pp. 19-20.^{2/} Yet the Commission did not evaluate our formula or even mention
its existence, further underscoring CFA and CU's contention that the Diversity Index is
fundamentally flawed.^{3/}

^{1/} The views expressed in these Comments are the institutional views of the Diversity and Competition
Supporters, and do not necessarily reflect the individual views of each of their respective officers, directors, advisors
or members.

^{2/} This formula was developed in the Diversity and Competition Supporters Reply Comments (February 3,
2003), pp. 17-24, and in the April 28, 2003 Letter to Hon. Michael K. Powell from David Honig, pp. 6-7 and
n. 15.

^{3/} Our formula measured consumer utility from source diversity. But even if the Commission were correct
in finding that source diversity is unimportant, our formula could be adapted to measure other forms of diversity in
a manner that properly weights all media to avoid the anomalous results discussed by CFA and CU.

No. of Copies rec'd 2
List ABCDE

II. Office of Communication of the United Church of Christ, Inc.

UCC urges the Commission to reconsider its decision to eliminate the Sales Solicitation Feature of the failed, failing and unbuilt stations rules. UCC Petition for Reconsideration, pp. 25-26. We agree with UCC's analysis, having also objected to this decision. See Diversity and Competition Supporters Petition for Reconsideration, pp. 32-36.

UCC points to an aspect of this problem that we had overlooked: the Commission's decision to consider stations' desire to complete the transition to DTV as a factor in granting failed/failing/unbuilt station waivers and permitting additional duopolies. UCC Petition for Reconsideration, p. 26. As UCC points out, "[s]ince virtually every applicant can argue that allowing the proposed merger will help it to complete the transition to DTV, this factor potential renders the waiver standard meaningless." Id. Many, if not most duopolizable stations (i.e., those not ranked #1 through #4 in the ratings) will find a way to qualify as at least a "failing" station under this interpretation of the rules.

III. National Organization for Women

NOW points out that the Commission "never cites NOW's comments or *ex parte* letters which explained that minorities and women are drastically underrepresented in station ownership." NOW Petition for Reconsideration, p. 2. We had a similar experience in the proceedings below. See Diversity and Competition Supporters Petition for Reconsideration, pp. 1-28 (showing that the Commission largely ignored the minority ownership issue and entirely disregarded eleven proposals to address this issue while irrationally postponing two proposals and rejecting another).

NOW further points out that it is insufficient for the Commission merely to promise to address these issues in a future rulemaking proceeding. Noting that the Commission issued a notice of proposed rulemaking in 1995 on this subject but never completed it, NOW predicts that "the Commission may never complete" a new minority and female ownership proceeding.^{4/}

^{4/} Id., p. 3 (citing Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities (NPRM), 10 FCC Rcd 27888 (1995)).

NOW's prediction seems well taken, given the manner in which the Commission handled our proposals.^{5/}

IV. National Association of Black Owned Broadcasters

NABOB points out that the Commission deferred consideration of all of NABOB's proposals until the Commission adopts an NPRM to consider minority ownership proposals. NABOB Petition for Reconsideration, p. 7. NABOB's proposals have merit. Like our proposals, NABOB's proposals deserve consideration now. As Commissioner Copps noted, "I fail to see how we can perpetuate diversity of viewpoint, for example, without addressing minority ownership. Ownership matters to diversity. The issue of its impact on women and minorities should not be relegated to a Further Notice at some indeterminate time."^{6/}

* * * * *

^{5/} See, e.g., Diversity and Competition Supporters Petition for Reconsideration, pp. 16-19, discussing two 1999 MMTC proposals that the Commission refused in 2001 to rule upon until it evaluated certain research studies published in 2000. When we presented these proposals again in our Comments in this proceeding, the Commission failed even to mention their existence.

^{6/} Report and Order, 18 FCC Rcd 13620, 13966 (2003) (Dissenting Statement of Commissioner Michael Copps).

Respectfully submitted,

David Honig

David Honig
Executive Director
Minority Media and Telecommunications Council
3636 16th Street N.W., Suite B-366
Washington, D.C. 20010
(202) 332-7005
dhonig@crosslink.net

Counsel for Diversity and Competition Supporters:

American Hispanic Owned Radio Association
Civil Rights Forum on Communications Policy
League of United Latin American Citizens
Minority Business Enterprise Legal Defense and
Education Fund
Minority Media and Telecommunications Council
National Asian American Telecommunications
Association
National Association of Latino Independent
Producers
National Coalition of Hispanic Organizations
National Council of La Raza
National Hispanic Media Coalition
National Indian Telecommunications Institute
National Urban League
Native American Public Telecommunications, Inc.
PRLDEF-Institute for Puerto Rican Policy
UNITY: Journalists of Color, Inc.
Women's Institute for Freedom of the Press

September 4, 2003

Certificate of Service

I, David Honig, hereby certify that I have this 6th day of October, 2003 caused a copy of the foregoing "Comments on Petitions for Reconsideration" to be sent by U.S. First Class Mail, Postage Prepaid, to the following:

Dr. Mark Cooper
Consumer Federation of America
1424 16th Street N.W.
Washington, D.C. 20006

Angela J. Campbell, Esq.
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Ave. N.W.
Washington, D.C. 20001

Andrew Jay Schwartzman, Esq.
Media Access Project
1625 K Street N.W. #1118
Washington, D.C. 20006

James L. Winston, Esq.
NABOB
1155 Conn. Ave. N.W. #600
Washington, D.C. 20036

/s/

David Honig